

IN THE WORLD TRADE ORGANIZATION

European Union — Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia — (Second complaint)

WT/DS494

**Third Party Oral Statement
by
Norway
at the Third Party Session of the Panel**

Geneva
12 September 2019

Madam Chair, Members of the Panel,

1. Norway welcomes this opportunity to present its views on the issues raised in these panel proceedings.
2. Norway did not present a written third party submission to the Panel, and without taking a position on the facts of this dispute, Norway will briefly offer its observations on the interpretation of the first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement.
3. The Russian Federation challenges the European Union’s “cost adjustment methodology”, whereby the EU investigating authorities allegedly reject part of the costs reflected in the records when such costs and/or prices are viewed by the EU authorities as “artificially or abnormally low” due to alleged “distortions” or “market impediments” like government price regulation or the application of export duties in the country of origin.¹
4. The obligation on the investigating authorities according to Article 2.2.1.1, is subject to two cumulative conditions:
 - i) that the records kept by the exporter or producer are in accordance with the generally accepted accounting principles (GAAP) of the exporting country; and
 - ii) that such records reasonably reflect the costs associated with the production and sale of the product under consideration.
5. If these two conditions are fulfilled, the investigating authorities “shall normally” calculate the costs on the basis of records kept by the exporter or producer under investigation.
6. The ordinary meaning of the adverb “normally” suggests “[u]nder normal or ordinary conditions; ordinarily; as a rule”.² The Appellate Body confirmed in *US – Clove Cigarettes* that “the qualification of an obligation with the adverb ‘normally’ does not, necessarily, alter the characterization of that obligation as constituting a ‘rule’”, but rather

¹ The Russian Federation’s First Written Submission, para. 299.

² The New Shorter Oxford English Dictionary, 4th edition, L. Brown (ed.) (Oxford University Press, 1993), Vol. 2, p. 1940.

that the term “normally” indicates that the rule “admits derogation” under conditions that are not “normal” or “ordinary”.³

7. Moreover, the panel in *China – Broiler Products* also clarified that “the use of the term ‘normally’ in Article 2.2.1.1 means that an investigating authority is bound to explain why it departed from the norm and declined to use a respondent’s books and records”.⁴
8. Hence, WTO jurisprudence indicates that an investigating authority may depart “from the norm” of calculating costs on the basis of exporter or producer records only where: (i) the relevant conditions or circumstances are not “normal” or “ordinary”; and (ii) the investigating authority explains or justifies that departure.
9. Regarding the meaning of the second condition in the first sentence of Article 2.2.1.1, Norway notes that the question regarding whether the test of reasonableness is related to the quality of the records as such was accurately clarified in the Appellate Body Report in *EU – Biodiesel*. It is the *records* that must be in accordance with the GAAP, and the *records* that must “reasonably reflect the costs associated with the production and sale of the product under consideration”. The Appellate Body held that “in accordance with the ordinary meaning of the terms in their context and in the light of the object and purpose of the Anti-Dumping Agreement, we understand this condition as referring to whether the records kept by the exporter or producer sustainably and sufficiently correspond to or reproduce those costs incurred by the investigated exporter or producer that have a genuine relationship with the production and sale of the specific product under consideration”.⁵
10. In Norway’s view, the definition of dumping in the GATT 1994 Article VI underpins this interpretation of Article 2.2.1.1. Government regulation or intervention in the home market will typically affect prices on domestically consumed products and exported products alike. Thus, the products are not “introduced into the commerce of another

³ Appellate Body Report, *US – Clove Cigarettes*, para. 273.

⁴ Panel Report, *China - Broiler Products*, para. 7.161.

⁵ Appellate Body Report, *EU – Biodiesel*, para. 6.26.

country at less than the normal value of the products”, as required by the dumping definition.

Thank you.
